CANADA-U.S. TRADE DISPUTES

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CANADA-U.S. TRADE DISPUTES

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ISSUE DEFINITION

Although the seven rounds completed before the start of the current Uruguay Round reduced international tariff rates significantly, prior to the Tokyo Round of GATT negotiations (1973 - 1979) little had been done to address non-tariff barriers. As tariffs have declined, however, governments have increasingly resorted to the use of non-tariff measures, such as national trade laws, to protect domestic markets from import competition. While it can be argued that countervailing duty, anti-dumping, emergency action and other national trade laws serve a valid purpose and are sanctioned by the GATT, they can also be used as protectionist devices.

Driven by annual current account deficits in excess of US$100 billion and increased foreign penetration of key U.S. industries, the U.S. has fortified its countervailing, anti-dumping and other trade laws in order to "level the playing field" with respect to international competition. Moreover, the U.S. appears willing to establish and use trade laws, such as section 301 of the *Trade Act* of 1974, that can operate outside the GATT, in order to pry open foreign markets. With three-quarters of Canadian exports destined for the U.S. market, the rising number of trade complaints by the U.S. is especially threatening to this country. Indeed, it is fair to say that Canada's negotiation of the Canada-U.S. Free Trade Agreement (FTA) was motivated as much by fear of U.S. protectionism as the desire to obtain the economic benefits from lower tariffs.

The degree of shelter from U.S. protectionism provided by the FTA is still under debate. Nevertheless, Chapter 19 of the Agreement provided a dispute settlement mechanism to review anti-dumping and countervailing duty determinations by authorities in both countries. The North American Free Trade Agreement (NAFTA), which went into effect on 1 January

1994, provides a similar review process. The separate dispute settlement mechanism in Chapter 20 of the NAFTA (previously Chapter 18 of the FTA) is intended to resolve disagreements over the interpretation and application of the Agreement. The NAFTA/FTA provisions related to safeguard measures limit the scope of application of these U.S. trade laws.

Since Canada-U.S. trade also remains within the jurisdiction of the GATT, settlement of certain bilateral trade disputes may be initiated under either the GATT or NAFTA dispute settlement procedures. The choice of dispute settlement mechanism will depend on the nature of the complaint, the relative timeliness of each procedure and whether other countries share the complaint.

BACKGROUND AND ANALYSIS

A. Subsidy and Dumping Disputes

The application of countervailing duties on imports is intended to offset the unfair advantage that subsidies confer on foreign goods over goods produced domestically. Countervailing duties are applied under domestic trade law but are sanctioned by the GATT, Article VI, which restricts the size of a countervailing duty to the amount of the subsidy and sets other conditions for its application.

The GATT Tokyo Round Agreement on Interpretation and Application of Articles VI, XVI and XXIII, also known as the "Subsidies Code," set out two means of dealing with complaints about foreign subsidies. These two procedures are commonly referred to as "Track I" and "Track II." Track I of the Subsidies Code defines the unilateral domestic legal procedure for taking action against a foreign subsidy. This specifies that a countervailing duty can be applied under domestic law if: (i) a subsidy exists; (ii) there has been material injury or the threat thereof to a domestic industry; (iii) a causal link exists between the subsidized imports and the injury to domestic industry.

Canadian and U.S. countervailing duty laws comply with the conditions set out in Track I of the Subsidies Code. Under U.S. law, the International Trade Administration (ITA) of the Department of Commerce determines whether a subsidy exists, while the question of material injury is decided by the U.S. International Trade Commission (ITC). In Canada the

question of injury is decided by the Canadian International Trade Tribunal (CITT) while the determination of subsidy is made by the Department of National Revenue, Customs and Excise.

In the arsenal of U.S. trade legislation, countervailing duty laws probably pose the greatest threat to Canadian exports. Since 1985 the U.S. has undertaken countervailing duty actions against imports of Canadian raspberries, oil drilling equipment, Atlantic groundfish, cut flowers, new steel rails, limousines and pork and other products. Perhaps the most significant countervailing duty actions were taken in 1986 and 1991, both against imports of Canadian softwood lumber. Not only did these trade actions affect about $4 billion in Canadian lumber exports, but they reversed a 1982 ruling that Canadian softwood lumber did not benefit from subsidies as defined under U.S. trade law. The reversal heightened suspicions that U.S. trade law was being driven in large measure by political concerns.

In contrast to the unilateral nature of the Track I procedure, Track II of the GATT Subsidies Code sets out an international dispute settlement procedure involving consultation, conciliation and referral to a GATT panel of experts. If consultation and conciliation between the countries fail to resolve a subsidies dispute, a Committee composed of signatories to the Subsidies Code may establish a panel of experts to study the matter and report back to the Committee. After considering the report, the Committee may make recommendations to the parties involved with a view to resolving the dispute. If the Committee's recommendations are not followed, it may authorize appropriate countermeasures such as withdrawal of GATT concessions. While export subsidies on products other than certain primary products are prohibited, the Subsidies Code did not clearly indicate which domestic subsidies are prohibited. This, combined with the difficulty in proving the connection between the subsidy and the injury to domestic industry, has prevented Track II from being a viable alternative to the unilateral Track I procedure for addressing complaints about domestic subsidies.

(Note, however, that the recent Uruguay Round Agreement on Subsidies and Countervailing Measures contains a definition of subsidy and introduces the concept of a "specific" subsidy, the only type that would be subject to discipline. Further, the Uruguay Round Agreement establishes three categories of subsidies. These are: a) prohibited subsidies; b) actionable subsidies; and c) non-actionable subsidies.)

The Subsidies Code dispute settlement mechanism has, however, been used to challenge the legality of countervailing duty actions taken under the unilateral Track I procedure. Between 1980 and 1989, there were three complaints about Canadian countervailing duty actions. One of these related to the imposition of a countervailing duty against U.S. corn. Canada has complained twice about U.S. countervailing duty actions taken against Canadian goods, during the ten-year period.

Anti-dumping duties are applied when goods are sold in the importing country at prices below those at which they are sold in the country of origin, or below the cost of production. Article VI of the GATT recognizes that a country is entitled to levy anti-dumping duties on such imported products that cause or threaten material injury to domestic industry. Canada and the U.S. are also signatories to the Tokyo Round Agreement on Implementation of Article VI (the Anti-dumping Code) which sets the guidelines for determining dumping and injury under national trade laws.

U.S. and Canadian laws are consistent with the Tokyo Round Anti-Dumping Code. In the U.S. the International Trade Commission (ITC) decides the issue of material injury while the determination of dumping is made by the International Trade Administration (ITA) of the Department of Commerce. In Canada the Canadian International Trade Tribunal (CITT) decides the question of injury while the Department of Revenue rules whether dumping exists. Although Canada has initiated more anti-dumping actions against the U.S. than vice versa, the U.S. has brought cases against certain Canadian exports such as steel and steel rails, raspberries, and paving equipment parts.

The Tokyo Round Anti-Dumping Code also outlines an international dispute settlement procedure in anti-dumping cases but does not establish specific time limits for each stage of dispute resolution. Rather, the Code refers to the provisions governing the general dispute settlement provisions found in Article XXIII of the GATT. Between 1980 and 1989 Canada was involved in only one GATT dispute settlement complaint under the Anti-Dumping Code.

(Note that the Uruguay Round "Agreement on Implementation of Article VI (Anti-Dumping)" provides greater clarity and more detailed rules for determining that a product is dumped, criteria for determining injury, procedures for initiating and conducting anti-dumping

investigations and the implementation and duration of anti-dumping measures. The Uruguay Round Agreements also tighten up the timetable for resolving disputes, including the settlement of disputes regarding anti-dumping measures.)

Chapter 19 of the North American Free Trade Agreement provides for the establishment of a panel to review anti-dumping and countervailing duty final determinations by the Department of Revenue in Canada, or by the Department of Commerce in the U.S. It also provides for binational panel decisions on the injury findings of the Canadian International Trade Tribunal (CITT) in Canada or by the International Trade Commission in the U.S. (In the case of Mexico, the Secretariat of Trade and Industrial Development is the designated authority in anti-dumping countervailing duty investigations.) The review procedure by the binational panel takes the place of judicial review in all three countries. The panel's mandate is to determine whether the final ruling by the relevant agency was in accordance with domestic law in that country. Panel decisions are binding under the respective country's trade law. Chapter 19 of the NAFTA also provides a procedure to settle disputes arising when one country objects to another country's amendments to anti-dumping or countervailing duty legislation.

B. Emergency Actions Disputes

In contrast to anti-dumping and countervailing duty laws which are intended to address "unfair" foreign competition, emergency actions (otherwise known as safeguard or escape clause actions) are concerned with providing industries and workers with temporary relief from injurious but fairly traded import competition. Canadian and U.S. laws are consistent with Article XIX of the GATT, which permits the temporary imposition of import relief when imported products are causing or threatening "serious injury" to domestic producers. (The test of "serious injury" is more difficult for a complainant to show than the "material injury" test in anti-dumping and countervailing duty cases). Temporary import relief can take the form of tariffs or quantitative restrictions on imports.

In Canada the Canadian International Trade Tribunal determines the question of serious injury while in the U.S. this is done by the International Trade Commission (ITC). If the ITC makes an affirmative determination the President is required to provide import relief

unless it is not in the national interest. The imposition by the U.S. of tariffs against imports of cedar shakes and shingles is an example of a safeguard action that particularly damaged Canadian exports.

The NAFTA provides a two-track system for safeguard actions. Under the bilateral track, such actions may be taken against imports solely from another NAFTA country but only during the free trade transition period. Bilateral actions may be taken only once against a particular good and may last for no longer than three years. (For extremely sensitive goods, safeguard actions may be extended to a fourth year. The NAFTA also contains special safeguard provisions which apply to trade in certain agricultural goods and textile and apparel imports.) Under the global track, another country may continue to take safeguard actions against imports from all countries but must exclude imports from another NAFTA country unless these imports account for a substantial share of imports and "contribute importantly" to serious injury.

C. Other Trade Disputes

1. Dispute Settlement under the GATT

Article XXII of the GATT provides contracting parties with the right to consult on any matter affecting the operation of the Agreement. Article XXIII of the GATT, which establishes the primary means of addressing trade disputes under the Agreement, permits a country to complain that benefits accruing to it under the GATT are being nullified or impaired by the actions of another country.

Although nullification and impairment can be argued on the basis of direct violations of the terms of the GATT (ie. Article III National Treatment) a measure need not breach a GATT obligation directly. An early ruling on Article XXIII suggests that actions by the offending country that harm the trade of the other country and "could not reasonably have been anticipated" at the time the trade concessions were negotiated constitutes nullification or impairment. In practice, there is a presumption of nullification or impairment when: a) GATT obligations are breached; b) quantitative restrictions are imposed on trade; c) domestic subsidies are used to eliminate imports.

The "Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance" reached at the Tokyo Round of GATT negotiations defines a code of procedure for settlement of disputes under Articles XXII and XXIII of the Agreement and the other dispute settlement mechanisms of the GATT. The procedure provides for the establishment of a panel of three or five experts from a list maintained by the Director-General of GATT. The panel must make an objective assessment of the facts of the case and, where the parties have failed to resolve the dispute, submit its findings in a written report without undue delay. (According to the annex to the Understanding, panel reports are usually completed within three to nine months.)

The Reports of panels and working groups are supposed to be given prompt consideration by the contracting parties to the GATT. In practice, the rule that GATT decisions are made by consensus of the contracting parties enabled one country to block, at least temporarily, each stage of the panel procedure. At the midterm GATT review in Montreal in December 1988 new rules were introduced to tighten up the resolution of GATT disputes.

The Uruguay Round's "Understanding on Rules and Procedures Governing the Settlement of Disputes" will improve the GATT dispute settlement mechanism further by providing for automatic adoption of panel reports unless the Contracting Parties agree by consensus not to adopt the report or one of the parties decides to appeal it. Concessions can also be suspended automatically if this is requested by one party to the dispute and mutually acceptable compensation has not been agreed upon.

2. Dispute Settlement under the NAFTA

Canada-U.S. disputes regarding the interpretation or application of the NAFTA or whenever a country considers that an actual or proposed measure would conflict with the terms of the NAFTA or would result in "nullification or impairment" are to be settled under the provisions of Chapter 20. Matters covered in Chapter 19 (anti-dumping and countervailing duty disputes) and other matters specifically provided for in the NAFTA are not covered by this dispute settlement process. According to the general dispute settlement procedure, the two countries should initially attempt to resolve disputes by government-to-government consultations. If these consultations fail to resolve the dispute, either country may request a meeting of the

Trade Commission, which is a trinational body whose principal representatives are the international trade ministers from the three countries. If a dispute has not been resolved within 30 days (or another agreed-upon time frame) after being referred to the Trade Commission, upon the request of either country, the dispute must be referred to a five-member arbitral panel chosen from a trilaterally agreed roster of eminent trade, legal and other experts.

Decisions of the Trade Commission are by consensus but must normally be based on the panel's report. Where the Commission is unable to agree on a mutually satisfactory solution, the complaining country is entitled to suspend the application of equal benefits to the other country.

D. Choosing a Dispute Settlement Mechanism

The advent of the FTA (and now NAFTA) provides Canada and the U.S. with a choice of resolving trade complaints by means of either the GATT or the FTA/NAFTA dispute settlement mechanisms. The choice of forum will depend on a number of factors including the need for a speedy resolution, the perception of the relative fairness of the two systems and the presence of political support from other countries.

With respect to timeliness, the FTA/NAFTA's strict time limits for each stage of dispute settlement trade disputes has argued in favour of these procedures. However, the GATT dispute settlement process was significantly improved at the mid-term meeting in Montreal in December 1988 and in the Uruguay Round's Understanding on dispute settlement reached in December 1993. Stricter time limits and more automatic triggers at crucial stages in the GATT dispute settlement process may make it compare favourably with the NAFTA mechanisms with respect to timeliness.

Since neither the original GATT nor the Tokyo Round Subsidies Code defined an illegal domestic subsidy, GATT did not provide a viable alternative to unilateral legal proceedings for settling these types of disputes. Time will tell whether the Uruguay Round changes to the GATT rules, especially the inclusion of a subsidy definition, will change this situation.

Although FTA/NAFTA dispute settlement panels are restricted to ruling on whether anti-dumping or countervailing duty determinations by the respective country's agencies are in accordance with domestic law, these panels have the same latitude in these cases as domestic trade courts. Trade experts argue that this still provides the panels with "plenty of leeway" since U.S. court judges have used their prerogative in the past to modify such concepts as the definition of a subsidy and the measurement of dumping. FTA/NAFTA anti-dumping and countervailing duty panel decisions are directly applicable under Canadian and U.S. law. This is not true of GATT panel rulings.

E. GATT Disputes

1. Dairy Products

In January 1988, the federal government took further steps to secure the dairy industry from foreign competition by adding certain dairy products to the Import Control List. These products include: ice cream and derivatives; yogurt and liquid forms of skim milk; buttermilk; and blends of these products. Canada currently imports less than $1 million worth of these products annually but the government was concerned that future imports could undermine this country's dairy supply management program. The restrictions are consistent with Canada's rights and obligations under the GATT and the FTA, according to the government. Article XI(2)(c)(i) of the GATT does permit import restrictions on certain agricultural or fisheries products necessary to the enforcement of domestic production or marketing restrictions. Article 710 of the Canada-U.S. Free Trade Agreement states that both parties have retained their rights and obligations under Article XI of the GATT.

The U.S. objected to the Canadian restrictions on imports of ice cream and yogurt and complained to the GATT on 20 December 1988. The U.S. argued that the import restrictions on ice cream and yogurt do not fall under the exemption found in Article XI(2)(c)(i). For its part, Canada has complained to the GATT about the U.S. prohibition on imports of Canadian ice cream which has been in place for a number of years.

In September 1989, the GATT ruled that Canadian import restrictions on ice cream and yogurt contravene Canada's trading obligations.

In December 1989, Canada agreed to adopt the GATT report, which argued that the import restrictions on ice cream and yogurt do not fall under GATT's Article XI exemption for supply-managed products because they are processed rather than primary products. Canada indicated that implementation of the report recommending the removal of the import restrictions will be delayed, however, pending the scheduled completion of the Uruguay Round of GATT negotiations.

Since the Uruguay Round was completed in December 1993, Canada must now either implement the GATT panel report or reach a negotiated settlement with the U.S.

However, the larger question - whether the GATT or the NAFTA rules with respect to tariffs on basic supply-managed goods, such as dairy, poultry and eggs, also remains unanswered. The U.S. argues that Canada is required under the North American Free Trade Agreement to eliminate all tariffs - including those arising from GATT tariffication of import quotas. Canada takes the position that the GATT rules take precedence with respect to Canadian supply-managed commodities. The Uruguay Round Agreement on Agriculture requires only a minimum 15% tariff cut per item and a 36% reduction average for all agricultural goods.

On 14 July 1995, the U.S. formally requested the establishment of a panel under the NAFTA Chapter 20 dispute process (see: "Section F: Summary of FTA Chapter 18 (NAFTA Chapter 20) Cases").

2. Beer and Wine

In July 1989, the U.S. lodged a complaint against the Ontario government's increase in the price of U.S. beer. Ontario claimed that the increase was necessary to offset additional costs associated with warehousing and distributing U.S. beer. U.S. brewers, however, believe that the price was raised to placate the Canadian industry, which had been losing market share to the cheaper U.S. product. According to the U.S., Ontario's price hike violates Article 1204 of the FTA, which permits only those discriminatory measures related to beer sales which were in force as of 4 October 1987.

At the end of June 1990, the U.S. launched a trade action under section 301 of the U.S. *Trade Act of 1974* citing unfair provincial trade practices. The action was in response to a complaint brought on 16 May 1990 by G. Heileman Brewing Co. Inc. of LaCrosse,

Wisconsin, which is seeking increased access to the Canadian market for its Lone Star and Ranier brands of beer. Under section 301, the U.S. Trade Representative must first consult with the offending foreign government before proceeding to dispute settlement under the applicable trade agreement. In this case, the U.S. used the GATT dispute settlement mechanism because beer is excluded from the FTA. Furthermore, the GATT has already ruled against provincial beer and wine pricing policies in response to an earlier complaint brought by the European Community.

In September 1990, a second U.S. brewer, Stroh Brewery Company, filed another section 301 petition alleging that discriminatory distribution and pricing practices by the Ontario Liquor Control Board restrict imports. U.S. Trade Representative Carla Hills indicated that the second complaint will be investigated in the context of the earlier complaint by G. Heileman Brewing Co. Canada accepted a U.S. request for a GATT panel review of Canadian pricing practices that, according to the U.S., discriminate against imports of U.S.-made beer.

In October 1991, the GATT panel report on Canadian beer pricing and distribution practices was released. The report gave Canada until March 1992 to eliminate discriminatory pricing practices against U.S. beer and until July 1992 to correct other unfair practices.

On 31 March 1992, Canada filed a plan with the GATT that would, within three years, remove discriminatory provincial pricing practices affecting imported beer. The U.S. objected to the three-year delay in complying with the GATT panel report and threatened to apply duties on imported Canadian beer of up to U.S.$8 per barrel. In response to this, Canada offered to shorten the period before removal of trade barriers; however, it viewed as unrealistic the U.S. demand that American beer be granted access to provincial beer outlets by the summer of 1992.

Over the weekend of 25-26 April 1992, Canada and the United States reached agreement in principle to remove by 30 June 1992 discriminatory Canadian markups on imported U.S. beer and to eliminate the requirement that imported U.S. beer be sold in six- packs only. Access by U.S. brands to beer stores would, however, be delayed until 30 September 1993.

The tentative Canada-U.S. agreement was derailed by the Ontario budget of 30 April 1992, which imposed an environmental tax of 10 cents per can on beer sold in cans.

Opponents of the environmental tax view it as a thinly-veiled protectionist measure since it applies to cans containing beer but not soft drinks. Most of the U.S. beer sold in Canada is contained in cans while almost 80% of Canadian-brewed beer is sold in bottles in this country.

At the July meeting of the GATT Council the U.S. formally requested approval to retaliate but this request was blocked by Canada and opposed by the EC. Nevertheless, the U.S. decided on 24 July 1992 to impose unilaterally duties of US$3 per case of beer imported from Ontario, a step open to it under section 301 of the *Trade Act* of 1974. Canada immediately responded by levying a duty of $2.40 per case on beer shipped into Ontario by U.S. brewers G. Heileman Brewing Co. and Stroh Brewing Co. U.S. beer shipments to Ontario amount to about $20 million per year while annual Ontario beer exports to the U.S. are valued at about $125 million (wholesale).

For its part, Canada requested (and the U.S. accepted) a GATT panel to determine whether U.S. federal and state tax laws discriminate against Canadian beer. At the federal level, U.S. tax legislation passed in 1990 provides an excise tax reduction to small U.S. beer, wine and cider-makers, but not to foreign-made products. Canada also alleges that tax laws in certain states, providing a tax exemption for beer with less than 4% alcoholic content, discriminate against regular Canadian beer, which contains 5% alcohol.

The GATT panel decision provided to the two governments on 7 February 1992 affirmed that U.S. tax policies do discriminate against Canadian beer. The GATT panel report was adopted in June 1992.

On 5 August 1993, the Canada-U.S. beer dispute ended when the two countries signed a Memorandum of Understanding (MOU) under which each country agreed to drop its import surtaxes on the other's beer exports. Under the terms of the MOU, provincial beer distribution authorities must reduce the handling charges imposed on U.S. beer and provide access to provincial beer distribution facilities (i.e., the Brewers' Retail in Ontario). Ontario is, however, permitted to retain its controversial 10 cent beer-can levy and to maintain minimum selling prices.

At the end of January 1994, the U.S. threatened to abrogate the MOU on the grounds that Ontario, Quebec and British Columbia had failed to provide the required access to provincial distribution networks. Permission from the Quebec government for the U.S.-based

company Stroh Brewery to sell and distribute its inexpensive beer directly to Quebec grocery stores, bars and restaurants partially resolved the problem.

At the same time, Canada was dissatisfied with the U.S. lack of progress in changing its discriminatory tax laws. A Canadian official stated, in February 1994, that there was no evidence that "any of the two federal and some 60 state measures have been brought into compliance with the panel report" (*Toronto Star*, 24 February 1994).

A 1991 ruling by the Canadian International Trade Tribunal to the effect that British Columbia beer producers were being injured was found by a GATT panel to violate the GATT Tokyo Round Anti-Dumping Code. Article 4.1(ii) of the Code states that injury may be found on a regional basis when "there is a concentration of dumped imports into such an isolated market." The CITT subsequently announced that it would review its ruling on imports of U.S. beer into B.C. On 2 December 1994, the CITT rescinded its earlier ruling that British Columbia beer producers constitute a regional industry. The CITT found that since the earlier ruling there has been significant interprovincial trade in beer. The latest CITT ruling has been appealed to a binational panel by B.C. beer producers.

3. Softwood Lumber

On 3 September 1991, the Canadian government announced that, effective 4 October 1991, it would terminate the Softwood Lumber Memorandum of Understanding (MOU) agreed to by Canada and the United States in December 1986. Under the MOU Canada had agreed to impose a 15% export tax on certain softwood lumber products exported to the U.S. In return, the U.S. had agreed not to impose a countervailing duty on imports of Canadian softwood lumber.

In announcing its decision, the Canadian government noted that stumpage and other forestry charges had been increased in B.C., Quebec and Alberta, provinces which together accounted for 92.2% of Canadian softwood lumber exports to the U.S. in 1990. Moreover, softwood lumber exports from the Atlantic provinces had been exempt from the export tax since 1988. As a result, the Canadian government believes that Canadian softwood lumber production is not subsidized.

On 31 October 1991, the U.S. initiated a countervailing duty investigation of Canadian softwood lumber products. The U.S. also announced that, under the authority of section 301 of the *U.S. Trade Act of 1974*, bonding requirements equivalent to the discontinued export tax would be imposed on Canadian lumber. Normally, bonding requirements apply only after there has been a preliminary determination of subsidy. Lumber from the Maritime provinces and B.C. is exempt from the bonding requirement, while Quebec lumber is subject to a 6.2% bonding requirement and lumber from the Prairie provinces and Ontario is subject to a 15% bonding requirement. On 12 December 1991, the U.S. International Trade Commission made a preliminary affirmative determination of injury.

This was followed on 6 March 1992 by a preliminary affirmative determination by the U.S. Department of Commerce (DOC) that Canadian stumpage practices and log export restrictions constitute a subsidy equivalent to 14.48%. The affirmative final determination by the DOC on 15 May 1992 lowered the subsidy rate to 6.51% *ad valorem*. The ITC made a final ruling on 25 June 1992 that Canadian softwood lumber exports were causing material injury to the U.S. lumber industry.

Canada asked for a GATT panel to decide whether provincial stumpage practices constitute subsidies. The panel was also asked to look at whether the decision by the U.S. government to initiate the countervailing duty investigation itself (rather than upon a complaint by the industry) and to impose an interim bonding requirement is consistent with its GATT obligations. The GATT panel held its first meeting on 18 March 1992; a second meeting of the panel was held in May 1992. (See also discussion below on FTA Chapter 19 dispute settlement.)

In December 1992, the GATT panel ruled that the U.S. DOC did have the right to self-initiate the countervailing duty (CVD) investigation. The U.S. was not justified, however, in assessing duties on softwood lumber imports prior to the March preliminary affirmative determination by DOC. **The GATT panel did not rule on whether log export restrictions qualify as countervailable subsidies, since the panel's terms of reference dealt only with actions taken by the U.S. in October 1991 with respect to the initiation of the CVD investigation. The DOC added Canada's log export restrictions to the CVD investigation only at a later stage.**

4. Wheat

On 22 April 1994, the U.S. announced that within 90 days it would impose high tariffs on imports from Canada of wheat, barley and malt, unless Canada agreed to cap its exports of these products to the United States. American senators from grain-growing states had been complaining for some time that imports of these products were hurting U.S. farmers. Canada has argued that the rapid increase in such grain shipments - from 0.7 million tonnes in 1990 to an expected 2.5 million tonnes in the 1994 crop year - are the result of U.S. export subsidies. Payments under the U.S. program (the "Export Enhancement Program") have encouraged export of U.S. grain, thereby raising U.S. domestic grain prices and creating a market for Canadian wheat. Flooding in the U.S. mid-west in 1993 also played a part in creating the U.S. domestic grain shortage. Moreover, despite U.S. allegations that Canadian wheat is subsidized, four studies since 1990 have failed to find any proof of unfair trade practices by Canada.

The grain tariffs threatened by the U.S. would go into effect in mid-July 1994 but be retroactive to 1 July 1994. The U.S. is using GATT Article XXVIII, which permits modification of tariff schedules, to raise its grain tariffs. Since the U.S. is refusing to offer compensation to Canada for raising duties, Canada is threatening to impose retaliatory tariffs against imports into Canada of such U.S. products as chicken, wine, baked goods, pasta, canned fruit and canned tomatoes.

On 1 August 1994, Canada and the U.S. settled the wheat dispute. Under the agreement, which lasts until 31 July 1995, Canada can export up to 300,000 tonnes of durum wheat at the existing NAFTA tariff rate of US$3.08 per tonne (falling to US$2.31 per tonne in 1995). A tariff of US$23 a tonne will apply on exports from 300,000 to 450,000 tonnes; above that amount a prohibitive tariff of US$50 per tonne will apply.

With respect to all other types of wheat, the relevant NAFTA tariff rate applies up to a combined total of 1.05 million tonnes, with US$50 per tonne applying on the total above that amount.

The agreement does not apply to flour, semolina and barley. During the year, an independent binational commission will study grain marketing and support systems in the two countries.

On 22 June 1995, the independent panel -- the Canada-United States Commission on Grains -- issued an interim report on aspects of the two countries' grain marketing systems. One of its recommendations was that the cap on Canadian exports of wheat to the U.S. be removed. The panel also urged that the Canadian Wheat Board eliminate initial payment guarantees and target price deficiency payments. The United States was urged to eliminate or significantly reduce its export subsidy programs. The Commission's final report, which was due to be released on 11 September 1995, has been delayed. The restrictions on Canadian wheat exports to the U.S. expired on 12 September 1995; however, the U.S. government implied that it might initiate future trade action if Canadian wheat exports exceed the expired quota level of 1.5 million tonnes per year.

5. Sugar

As a result of the Uruguay Round Agreements, the U.S. is making changes that will limit access to the U.S. market by Canadian-refined sugar and sugar-containing products. The imposition of tariff rate quotas by the U.S. will reduce Canadian exports of refined sugar to the U.S. from a recent level of 38,000 tons to a portion of the 22,000-ton U.S. global quota. In addition, the U.S. is changing the classification of certain sugar-containing products, such as crystal drink mixes, so that these will now be subject to the tariff rate quota system. The new import restrictions by the U.S. will result in a loss of over 150,000 tonnes (14%) of Canadian refined sugar production worth an estimated $135 million in exports, according to the Canadian Sugar Institute. The U.S. has refused Canadian demands not to proceed with the new, more protective import regime. The Canadian government is consulting with industry and is considering its options, including possible retaliation against U.S. imports into Canada.

In March 1995, Revenue Canada initiated a combined anti-dumping and countervailing duty investigation of imports of refined sugar into Canada from the U.S., Korea, and four European countries. A preliminary decision announced by Revenue

Canada in July 1995 placed preliminary duties of up to 179% on imported sugar. It was found that sugar imported from the U.S. was being sold in Canada at prices averaging 44% below its U.S. selling price but sugar subsidies were insignificant.

The CITT is now considering whether Canadian sugar producers have been injured by the dumped imports from the U.S. and the dumped and subsidized imports from other countries.

F. Summary of FTA Chapter 18 (NAFTA Chapter 20) Cases

To date, there have been five panel decisions issued under Chapter 18 of the FTA, none of which was referred to binding arbitration. Nevertheless, four of the five panel decisions have been unanimous. The sole exception was the decision respecting U.S. regulations limiting the size of lobsters permitted for sale in that country. This panel split along national lines, with the Canadian minority viewing the U.S. restrictions as a prohibition on imports rather than a non-discriminatory internal measure. Three of five panel decisions have been favourable to Canada. (See below and Appendix 1.)

- West Coast Salmon and Herring from Canada: a binational panel ruled unanimously on 16 October 1989 that Canadian fish landing requirements were not in accord with either the GATT or the FTA. Canada and the U.S. subsequently reached a compromise requiring up to 25% of the salmon caught in B.C. waters to be sold to U.S. buyers over the side of fishing boats.

- U.S. Regulations on Lobster: in a 3-2 decision, a binational panel ruled on 25 May 1990 that U.S. laws prohibiting the import of Canadian live lobsters not meeting certain size requirements were justifiable, since they do not violate the national treatment principle. The panel split along national lines with the two Canadian panellists in the minority.

- Treatment of Non-Mortgage Interest: on 8 June 1992, a binational panel ruled unanimously in favour of Canada's position that non-mortgage interest payments are eligible for inclusion

in the direct cost of processing in determining local content under the rules of origin. (The U.S. had argued that Canadian automobile plants could not count non-mortgage interest payments as part of their Canada-U.S. content in order to qualify for duty-free treatment under the FTA.)

- Durum Wheat Sales: a binational panel concluded unanimously on 8 February 1993 that services rendered by the Canadian Grain Commission and payments by the Canadian government under the *Western Grain Transportation Act* do not violate FTA Article 701.3. This provision prohibits the export of agricultural goods to the other country at a price below acquisition price plus any storage, handling or other costs.

- Ultra High-Temperature (UHT) Milk: a binational panel ruled unanimously on 3 June 1993 that Puerto Rico's prohibition on the import of UHT milk from Quebec nullified and impaired benefits that Canada could reasonably expect to receive under the FTA. The panel recommended that a study be undertaken to determine whether UHT milk was produced in Quebec under conditions equivalent to those set out under U.S. law. If Quebec's UHT milk standards and those of Puerto Rico were found to have the same effect, UHT milk produced in Quebec should be re-admitted to Puerto Rico, according to the Panel.

- Uranium: In March 1993, Canada invoked the first stage of Chapter 20 of the NAFTA dispute settlement process - the consultations phase. The Canadian government believes that a U.S.-Russia agreement discriminates against Canadian uranium exports. Under this agreement, U.S. utilities are permitted, over ten years, to purchase 43 million pounds of cheap Russian uranium - which is believed to be stockpiled in large quantities - if they purchase an equal amount of newly produced U.S. uranium. Under the NAFTA, Canada must receive from the U.S. both national treatment - treatment as favourable as domestic goods receive - and most-favoured-nation treatment - treatment as favourable as is given to any other country's products.

In February 1995, Canada suspended its complaint about the legality of the U.S.-Russia agreement in response to U.S. assurances that imports under that agreement would be implemented so as to limit the impact on Canadian exports.

Canadian concerns were re-ignited in August 1995, however, when the U.S. revealed a plan to allow Russian commercial-grade uranium derived from nuclear warheads to be sold immediately in the United States. The U.S. administration had originally assured Canada that these sales would be required to wait until the year 2001 at the earliest.

- **Tariffs on Supply-Managed Products: The NAFTA Chapter 20 dispute settlement panel requested by the USTR on 14 July 1995 is expected to issue a final report on Canadian tariffs on supply-managed products (dairy, poultry and eggs) within five months after the last panellist has been chosen. Canadian tariffs established under the Uruguay Round Agreements range from 351% for butter to 182% for turkey (see earlier discussion of the dispute under Section E - GATT Disputes (Dairy Products)).**

G. Summary of Completed FTA/NAFTA Chapter 19 Cases

- **There have been 23 completed FTA/NAFTA dispute settlement reviews of determinations by Canadian agencies (Revenue Canada and the Canadian International Trade Tribunal) affecting U.S. exports. Thirteen determinations were affirmed by panels, seven cases were terminated at the request of the participants, and one review was dismissed because the participants failed to file briefs. In the remaining two cases, the dumping review was consolidated with the injury review.**

- There have been **26** completed reviews involving binational review determination by U.S. agencies (the Department of Commerce and the International Trade Commission) affecting Canadian exports. The results were:
  - **12 determinations were affirmed by FTA panels;**
  - six reviews were terminated at the request of the participants;
  - one review was consolidated with another review;

- **one case was dismissed by the panel.**

- two determinations were remanded by FTA panels resulting in lower U.S. countervailing duties:
  1) USA-89-1904-06 Fresh, Chilled and Frozen Pork from Canada;
  2) USA-89-1904-07 New Steel Rail, Except Light Rail, from Canada.

- four determinations were remanded by FTA panels resulting in the elimination of anti-dumping or countervailing duties:
  1) USA-89-1904-01 Red Raspberries from Canada (for two of three exporters);
  2) USA-89-1904-11 Fresh, Chilled or Frozen Pork from Canada;
  3) USA-91-1904-03 Live Swine from Canada;
  4) USA-92-1904-01 Certain Softwood and Lumber Products from Canada.

- Three panel decisions were referred to Extraordinary Challenge Committees (ECC) at the request of the United States. In each case the ECC affirmed the binational panel decision.
  1) ECC-91-1904-01USA Fresh, Chilled and Frozen Pork from Canada (unanimously dismissed request for extraordinary challenge and panel decision was affirmed);
  2) ECC-93-1904-01USA Live Swine from Canada (unanimously dismissed request for an extraordinary challenge and the panel decision was affirmed);
  3) ECC-94-1904-01USA Certain Softwood Lumber Products from Canada (with one dissenting opinion, request for an extraordinary challenge was dismissed and the panel decision was affirmed).

The greatest test so far of the FTA/NAFTA dispute settlement process was the softwood lumber countervail case. In December 1993, a binational panel remanded for a second time a subsidy determination by the U.S. Department of Commerce against imports of Canadian softwood lumber. In a 3-2 decision split along national lines, with the Canadian panellists in the majority, the panel instructed the Department of Commerce to find that provincial stumpage programs and log export restrictions are not countervailable subsidies under U.S. trade law.

In January 1994, the Department of Commerce reluctantly changed its determination to accord with the binational panel's ruling and eliminated the 6.51% countervailing duty.

On 6 April 1994, the U.S. Trade Representative filed an extraordinary challenge with the NAFTA Secretariat to appeal the earlier binational panel decision that Canadian lumber does not receive countervailable subsidies. The U.S. launched the extraordinary challenge on the grounds that two of the Canadian panellists had failed to disclose possible conflicts of interest

because they worked for legal firms whose clients included the Canadian government and lumber companies. The USTR also argued that the panel exceeded its authority in deciding that Canadian timber programs were not countervailable.

On 3 August 1994, the ECC dismissed the extraordinary challenge and affirmed the binational panel ruling. However, the ECC split along national lines with the two Canadian judges in the majority. In the minority, U.S. Judge Malcolm Wilkey stated that the earlier binational panel decision "may violate more principles of appellate review of agency action than any opinion by a reviewing body which I have ever read."

In September 1994, the U.S. Coalition for Fair Lumber Imports filed a lawsuit in the U.S. Court of Appeals alleging that the binational dispute settlement process violates the U.S. Constitution. The lawsuit was withdrawn by the Coalition on 15 December 1994 when Canada and the U.S. agreed to establish a government-to-government consultation process to try to resolve problems without resort to litigation. The paper outlining the consultation process recognizes the importance of a system of market-oriented forestry resource management in mitigating the possibility of contentiousness and litigation. The U.S. has also agreed to return nearly $800 million in duties and interest to Canadian lumber exporters.

H. Other Disputes

1. Culture and Broadcasting

In recent months, several disagreements with the U.S. have arisen over Canadian restrictions in the cultural industries. Most prominent was the dispute over the CRTC's decision to withdraw access by the U.S.-owned Country Music Television (CMT) to the Canadian cable television market. In February 1995, USTR Michael Kantor launched an investigation under section 301 of U.S. trade law. The case was settled in June 1995 when CMT was offered a share of the ownership of the Canadian replacement channel, New Country Network. The new station will be named Country Music Television (Canada).

Another cultural dispute involves the Canadian government's 80% tax on Canadian advertising on "split-run" magazines. The tax is aimed directly at *Sports*

***Ilustrated*, which is composed in the United States and telecommunicated to Canada for publishing. The USTR has placed Canada on the "Special 301" watch list of countries that deny adequate intellectual property protection to U.S. interests.**

PARLIAMENTARY ACTION

Bill C-2, An Act to implement the Free Trade Agreement between Canada and the United States of America, was introduced and read for the first time on 14 December 1988.

On 30 December 1988 the Government named a roster of 25 Canadians to serve on the FTA Chapter 19 binational dispute settlement panel in anti-dumping and countervailing duty cases. Also named were five judges to serve on the extraordinary challenge committee.

On 25 January 1989, 15 Canadians were selected to serve on FTA Chapter 18 binational dispute settlement panels; another 10 appointments were announced in May 1989.

In January 1989, the *Canada Gazette* published a Code of Conduct and Rules of Procedure for FTA binational panels as well as Extraordinary Challenge Committee Rules.

The *North American Free Trade Agreement Implementation Act* was passed by the House of Commons on 27 May 1993. The legislation was passed by the Senate and received Royal Assent on 23 June 1993.

CHRONOLOGY

22 May 1986 - U.S. government imposed a 35% tariff on Canadian exports of cedar shingles and shakes to the U.S. The tariff became effective 6 June 1986.

3 June 1986 - The Canadian government announced retaliatory tariff increases on exports of U.S. computer parts and publications to Canada.

26 June 1986 - The U.S. International Trade Commission delivered a unanimous ruling that Canadian softwood lumber exports were causing material harm to U.S. producers. This triggered an inquiry by the U.S. Commerce Department on whether Canadian producers were being unfairly subsidized.

16 October 1986 - The U.S. Department of Commerce found, in a preliminary ruling, that Canadian softwood lumber exports to the U.S. were being subsidized by 15% of their value.

30 December 1986 - The Canadian government agreed to impose a 15% duty on softwood lumber exports to the United States in return for the U.S. lumber coalition dropping its countervailing duty case.

8 January 1987 - The Canadian softwood lumber export tax took effect.

2 January 1988 - Prime Minister Mulroney and President Reagan signed the Canada-U.S. Free Trade Agreement.

19 January 1988 - Canada added certain dairy products to the import control list.

1 January 1989 - The Canada-U.S. FTA was implemented.

25 April 1989 - The Canadian government announced the enactment of new fish landing regulations affecting Pacific-caught salmon and herring.

24 May 1989 - The U.S. requested the formation of a binational panel to resolve the dispute involving Canadian fish landing requirements.

12 December 1989 - Canada announced that it was requesting a FTA binational panel under Chapter 18 of the FTA to examine U.S. size restrictions on the import of Canadian live lobsters.

22 February 1990 - Canada and the U.S. reached agreement on fish landing requirements for west coast salmon and herring.

25 May 1990 - A binational panel formed under Chapter 18 of the FTA ruled that U.S. import restrictions affecting Canadian lobsters did not contravene the Agreement.

21 June 1990 - A U.S. International Trade Commission report found that imports of Canadian durum wheat were not harming U.S. growers.

14 September 1990 - The Stroh Brewery Company filed a section 301 petition with the U.S. Trade Representative. It alleged discriminatory practices by the Ontario Liquor Control Board.

12 February 1991 - The ITC reversed its earlier injury determination regarding imports of Canadian pork products.

29 March 1991 - USTR invoked the FTA's extraordinary challenge procedure to examine the binational panel decision regarding injury to U.S. pork producers.

11 April 1991 - The Department of Commerce reduced the amount of subsidy it calculated that Canadian pork products received.

6 June 1991 - The U.S. duty on imports from Canada of cedar shakes and shingles was eliminated.

14 June 1991 - The FTA Extraordinary Challenge Committee dismissed the U.S. challenge to the binational panel decision in the pork products case.

3 September 1991 - The Canadian government announced that it would terminate the Softwood Lumber Memorandum of Understanding.

31 October 1991 - The U.S. initiated a countervailing duty investigation into softwood lumber imports from Canada.

6 January 1992 - Canada requested a binational panel under Chapter 18 of the FTA to settle a dispute regarding the FTA's rules of origin.

12 February 1992 - The U.S. Customs Service ruled that Honda Civics made in Canada failed to meet the required 50% North-American content level.

6 March 1992 - The U.S. Department of Commerce made a preliminary determination that Canadian softwood lumber benefits from a 14.48% subsidy.

15 May 1992 - The U.S. Department of Commerce made a final determination imposing a countervailing duty of 6.51% on softwood lumber from Canada.

8 June 1992 - A FTA Chapter 18 dispute settlement panel ruled that interest payments are includable in the direct cost of processing in determining rules of origin.

25 June 1992 - The U.S. International Trade Commission made a final ruling in a countervailing duty investigation that Canadian softwood lumber exports were causing material injury to the U.S. lumber industry.

24 July 1992 - The U.S. unilaterally imposed duties on Canadian beer. Canada retaliated immediately against imports of U.S. beer.

9 February 1993 - An FTA Chapter 18 dispute settlement panel ruled that assistance received by Canadian farmers through the Canadian Grain Commission and the *Western Grain Transportation Act* did not violate FTA Article 701.3.

8 April 1993 - An Extraordinary Challenge Committee dismissed a challenge to a binational panel decision regarding subsidies to live swine.

15 December 1993 - Agreement was reached at the Uruguay Round which, among other reforms, would tighten up the GATT dispute settlement process.

17 December 1993 - An FTA binational panel remanded back to the U.S. Department of Commerce its ruling that Canadian softwood lumber had received countervailable subsidies.

6 April 1994 - The USTR filed an extraordinary challenge with the NAFTA secretariat to appeal a binational panel subsidy ruling respecting softwood lumber.

17 December 1993 - A binational panel instructed the U.S. Department of Commerce to change its countervailing duty determination on Canadian softwood lumber.

1 August 1994 - Canada and the U.S. reached an agreement limiting the amount of Canadian wheat permitted to be imported into the U.S. at low rates of duty.

3 August 1994 - An Extraordinary Challenge Committee dismissed a challenge of the binational panel softwood lumber ruling.

14 September 1994 - The U.S. lumber lobby launched a constitutional challenge of the FTA dispute settlement process.

15 December 1994 - Canada and the U.S. agreed to establish a consultation process to resolve problems related to forestry management. The U.S. lumber lobby withdrew its constitutional challenge to the binational panel dispute settlement process.

22 June 1995 - The Canada-United States Commission on Grain issued an interim report on aspects of the two countries' grain marketing systems.

14 July 1995 - The U.S. formally requested the establishment of a NAFTA Chapter 20 dispute settlement panel to decide whether Canadian tariffs on supply-managed products can be maintained.

12 September 1995 - U.S. restrictions on exports of Canadian wheat expired.

APPENDIX 1

North American Free Trade Agreement (NAFTA)

ACTIVE CHAPTER 19 CASES
REVIEWING CANADIAN AGENCIES' DETERMINATIONS

CDA-94-1904-03 Certain Corrosion-Resistant Steel Sheet Products from Australia, Brazil, France, the Federal Republic of Germany, Japan, the Republic of Korea, New Zealand, Spain, Sweden, the United Kingdom and the United States of America

Revenue Canada Final Determination of Dumping

Appealed by: U.S. Producers
Decision: June 23, 1995, panel unanimously affirmed in part and remanded in part the agency's determination
Determination on Remand filed: August 4, 1995
Decision on Remand due: November 2, 1995

CDA-95-1904-01 Certain Malt Beverages from the United States of America

CITT Order Rescinding Injury Finding

Appealed by: Canadian Producers
Decision Due: November 15, 1995

CDA-95-1904-03 Machine Tufted Carpeting Originating in or Exported from the United States of America

Revenue Canada Re-determination

Appealed by: U.S. Producer
Decision Due: June 21, 1996

ACTIVE CHAPTER 19 CASES
REVIEWING U.S. AGENCIES' DETERMINATIONS

USA-94-1904-01 Live Swine from Canada

Commerce Final Results of Countervailing Duty Administrative Review

Appealed by: Canadian producers
Decision: May 30, 1995, the panel unanimously affirmed in part and remanded in part the agency's determination

Determination on Remand filed: August 14, 1995; amendment to the Determination on Remand filed on September 1, 1995

USA-94-1904-02 Leather Wearing Apparel from Mexico

Commerce Final Results of Countervailing Duty Administrative Review

Appealed by: Mexican producers
Decision due: November 6, 1995

USA-95-1904-01 Porcelain-on-Steel Cookware from Mexico

Commerce Final Results of Antidumping Duty Administrative Review

Appealed by: Mexican producers
Suspended: July 24, 1995, due to withdrawal of a panelist

USA-95-1904-02 Gray Portland Cement and Cement Clinker from Mexico

Commerce Final Results of Antidumping Duty Administrative Review

Appealed by: Mexican producers
Decision Due: April 26, 1996

USA-95-1904-03 Color Picture Tubes from Canada

Commerce Determination Not to Revoke Antidumping Duty Orders and Findings Nor to Terminate Suspended Investigations

Appealed by: Canadian Exporter
Decision Due: May 6, 1996

USA-95-1904-04 **Oil Country Tubular Goods from Mexico**
Commerce Final Antidumping Duty Determination

Appealed by: Mexican and U.S. producers
Decision Due: June 5, 1996

ACTIVE CHAPTER 19 CASES
REVIEWING MEXICAN AGENCIES' DETERMINATIONS

MEX-94-1904-01 **Import of Flat Coated Steel Products, in and from the United States of America**
SECOFI Final Antidumping Duty Determination

Appealed by: U.S. producers
Suspended: August 10, 1995, due to withdrawal of a panelist

MEX-94-1904-02 **Imports of Cut-to-Length Plate Products from the United States of America**
SECOFI Final Antidumping Duty Determination

Appealed by: U.S. producers
Decision: On August 30, 1995, panel, with two dissenting opinion, remanded the agency's determination
Determination on Remand due: September 20, 1995

MEX-94-1904-03 **Polystyrene and Impact Crystal from the United States of America**
SECOFI Final Antidumping Duty Determination

Appealed by: Mexican and U.S. producers
Suspended: August 10, 1995, due to withdrawal of a panelist

Free Trade Agreement (FTA)

ACTIVE CHAPTER 19 CASES
REVIEWING U.S. AGENCIES' DETERMINATIONS

USA-93-1904-01 Certain Cold-Rolled Carbon Steel Flat Products From Canada

USA-93-1904-02 Certain Hot Rolled Carbon Steel Flat Products From Canada

Commerce Final Antidumping Determination

Appealed by: Canadian producers
Suspended: On December 23, 1993, all proceedings stayed by Panel Order pending a final resolution of the negative injury litigation before the U.S. Court of International Trade

Status Report revised September 11, 1995
NOTE: This report is provided for general information only. The full texts of all decisions may be obtained from:

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N.B. When requesting a decision in Canada please indicate whether you are referring to FTA or NAFTA Panel Decisions

North American Free Trade Agreement

COMPLETED CHAPTER 19 CASES
REVIEWING CANADIAN AGENCIES' DETERMINATIONS

CDA-94-1904-01 Certain Fresh, Whole, Delicious, Red Delicious and Golden Delicious Apples, Originating in or Exported from the United States of America, Excluding Delicious, Red Delicious and Golden Delicious Apples Imported in Non-Standard Containers for Processing
CITT Injury Finding

Appealed by: Canadian producers
Outcome: Panel review terminated by joint consent of participants

CDA-94-1904-02 Synthetic Baler Twine with a Knot Strength of 200 lbs or Less, Originating in or Exported from the United States of America
CITT Injury Finding

Appealed by: U.S. producer/exporter and Canadian importer
Outcome: Panel unanimously affirmed in part and remanded in part the agency's determination. Final order affirming the Determination on Remand issued on July 31, 1995

CDA-94-1904-04 Certain Corrosion-Resistant Steel Sheet Products, Originating in or Exported from the United States of America
CITT Injury Finding

Appealed by: U.S. Producers
Outcome: Panel unanimously affirmed the agency's determination

CDA-95-1904-02 Fresh, whole, Delicious, Red Delicious and Golden Delicious apples, originating in or exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. Exporters
Outcome: Panel review automatically terminated by sole requestor

Canada-United States Free Trade Agreement

COMPLETED CHAPTER 19 CASES
REVIEWING CANADIAN AGENCIES' DETERMINATIONS

CDA-89-1904-01 Polyphase Induction Motors from the U.S.

Revenue Canada Final Determination of Dumping and Subsidizing

Appealed by: U.S. producer
Outcome: Panel review automatically terminated at request of participants

CDA-90-1904-01 Integral Horsepower Induction Motors

CITT Continuation of Injury Finding

Appealed by: U.S. producer and several Canadian importers
Outcome: Panel affirmed, with one partial dissent, the agency's determination

CDA-91-1904-01 Certain Beer Originating in or Exported from the United States of America by G. Heileman Brewing Company, Inc., Pabst Brewing Company and The Stroh Brewery Company for Use or Consumption in the Province of British Columbia

Revenue Canada Final Determination of Dumping

Appealed by: U.S. producers
Outcome: Panel unanimously affirmed in part and remanded in part the agency's determination; virtually no change in duty resulted from the Determination on Remand

CDA-91-1904-02 Certain Beer Originating in or Exported from the United States of America by G. Heileman Brewing Company, Inc., Pabst Brewing Company and the Stroh Brewery Company for Use or Consumption in the Province of British Columbia

CITT Injury Finding

Appealed by: U.S. producers
Outcome: Panel unanimously affirmed in part and remanded in part, with one concurring opinion, the agency's determination. Panel affirmed, with one dissenting opinion, the Determination on Remand

CDA-92-1904-01 Certain Machine Tufted Carpeting Originating in or Exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. producers
Outcome: Panel unanimously affirmed in part and remanded in part the agency's determination. Panel unanimously affirmed the Determination on Remand

CDA-92-1904-02 Certain Machine Tufted Carpeting Originating in or Exported from the United States of America
CITT Injury Finding

Appealed by: U.S. producers
Outcome: Panel remanded the determination to the agency twice in each instance affirming part of the determination. Final decision affirming the third Determination on Remand issued on April 21, 1994

CDA-93-1904-01 Gypsum Board Originating in or Exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. producers
Outcome: Panel unanimously remanded the agency's determination for further action. Final Order affirming the Determination on Remand issued on March 24, 1994

CDA-93-1904-02 Gypsum Board Originating in or Exported from the United States of America
CITT Injury Finding

Appealed by: U.S. producers
Outcome: Panel review terminated by joint consent of participants

CDA-93-1904-03 Tomato Paste in Containers Larger than 100 Fluid Ounces, Originating in or Exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. producers
Outcome: Panel review automatically terminated at request of participants

CDA-93-1904-04 Certain Hot-Rolled Carbon Steel Plate and High Strength Low Alloy Plate, Heat-Treated or not, Originating in or Exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. producers
Joinder: CDA-93-1904-04 and CDA-93-1904-06; under Rule 37(1), affirmative dumping and negative material injury determinations respecting the same goods shall be reviewed by one panel
Outcome: No panel decision - Reasons issued February 15, 1995

CDA-93-1904-05 Certain Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. producers
Joinder: CDA-93-1904-05 and CDA-93-1904-07; under Rule 37(1), affirmative dumping and negative material injury determinations respecting the same goods shall be reviewed by one panel
Outcome: No panel decision - Reasons issued August 2, 1994

CDA-93-1904-06 Certain Hot-Rolled Carbon Steel Plate and High Strength Low Alloy Plate, Heat-Treated or not, Originating in or Exported from the United States of America
CITT Negative Injury Finding

Appealed by: Canadian producers
Joinder: CDA-93-1904-04 and CDA-93-1904-06; under Rule 37(1), affirmative dumping and negative material injury determinations respecting the same goods shall be reviewed by one panel
Outcome: Panel unanimously affirmed the agency's determination

CDA-93-1904-07 Certain Flat Hot-Rolled Carbon Steel Sheet Products Originating in or Exported from the United States of America
CITT Negative Injury Finding

Appealed by: Canadian producers
Joinder: CDA-93-1904-05 and CDA-93-1904-07; under Rule 37(1), affirmative dumping and negative material injury determinations respecting the same goods shall be reviewed by one panel
Outcome: Panel affirmed, with two partial dissents, the agency's Finding

CDA-93-1904-08 Certain Cold-Rolled Steel Sheet Originating in or Exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. producers
Outcome: Panel unanimously affirmed in part and remanded in part the agency's determination. Panel unanimously affirmed the Determination on Remand

CDA-93-1904-09 Certain Cold-Rolled Steel Sheet Originating in or Exported from the United States of America
CITT Injury Finding

Appealed by: U.S. producers
Outcome: Panel unanimously affirmed the agency's determination

CDA-93-1904-10 Certain Solder Joint Pipe Fittings Originating in or Exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. producers
Outcome: Panel review terminated by joint consent of participants

CDA-93-1904-11 Certain Solder Joint Pressure Pipe Fittings and Solder Joint Drainage, Waste and Vent Pipe Fittings, Made of Cast Copper Alloy, Wrought Copper Alloy or Wrought Copper, Originating in or Exported from the United States of America
CITT Injury Finding

Appealed by: U.S. producers
Outcome: Panel, with one partial dissent, affirmed the agency's Determination

CDA-93-1904-12 Preformed Fibreglass Pipe Insulation with a Vapour Barrier, Originating in or Exported from the United States of America
Revenue Canada Final Determination of Dumping

Appealed by: U.S. producer
Outcome: Panel review terminated by joint consent of participants

CDA-93-1904-13 Preformed Fibreglass Pipe Insulation with a Vapour Barrier, Originating in or Exported from the United States of America
CITT Injury Finding

Appealed by: U.S. producers
Outcome: Panel dismissed the panel review due to failure to file briefs

COMPLETED CHAPTER 19 CASES
REVIEWING U.S. AGENCIES' DETERMINATIONS

USA-89-1904-01 Red Raspberries from Canada
Commerce Final Results of AD Duty Administrative Review for 1986-87

Appealed by: Three Canadian exporters
Outcome: Duties upheld against one exporter; on second remand, agency eliminated duties for two other exporters; both panel decisions were unanimous

USA-89-1904-02 Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada
Commerce Final Results of AD Duty Administrative Review for 1986-87

Appealed by: Canadian exporter and U.S. producer
Outcome: Panel unanimously affirmed the agency's determination

USA-89-1904-03 Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada
Commerce Final Results of AD Duty Administrative Review for 1986-87

Appealed by: Canadian exporter and U.S. producer
Outcome: Panel unanimously affirmed the agency's determination

USA-89-1904-04 Dried, Heavy Salted Codfish from Canada
Commerce Final Results of Administrative Review of AD Duty Order for 1986-87

Appealed by: Canadian exporter
Outcome: Panel review terminated by joint consent of participants

USA-89-1904-05 Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada
Commerce Amendment to Final Results of AD Duty Administrative Review for 1986-87

Appealed by: Canadian exporter and U.S. producer
Outcome: Panel consolidated this case with 89-1904-03 and terminated this panel review

USA-89-1904-06 Fresh, Chilled and Frozen Pork from Canada
Commerce Final Affirmative CVD Determination

Appealed by: Canadian producers, Canadian and provincial governments
Outcome: Panel affirmed in part and remanded in part the agency's determination; on second remand, the duty was reduced from 8 cents to 3 cents per kilo; both decisions were unanimous with one concurring opinion in each

USA-89-1904-07 New Steel Rail, Except Light Rail, from Canada
Commerce Final Affirmative CVD Determination

Appealed by: Canadian producer
Outcome: Panel unanimously affirmed in part and remanded in part the agency's determination; on remand, the duty was reduced from 112.34% to 94.57%

USA-89-1904-08 New Steel Rail, Except Light Rail, from Canada
Commerce Final Determination of Sales at Less than Fair Value

Appealed by: Canadian producer
Outcome: Panel affirmed, with one partial dissent, the agency's determination

USA-89-1904-09/10 New Steel Rails from Canada
USITC Threat of Injury Determinations

Appealed by: Canadian and U.S. producers
Outcome: Panel affirmed, with one partial dissent, the agency's determinations

USA-89-1904-11 Fresh, Chilled or Frozen Pork from Canada

USITC Threat of Injury Determination

Appealed by: Canadian producers and provincial governments
Outcome: Panel unanimously remanded, with one concurring opinion, the agency's determination; the agency reversed its determination following second unanimous panel decision. A request for Extraordinary Challenge Committee was filed (ECC-91-1904-01 USA) - see completed ECC Proceedings

USA-90-1904-01 Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada

Commerce Final Results of AD Duty Administrative Review for 1988-89

Appealed by: Canadian exporter and U.S. producer
Outcome: Panel remanded the determination to Commerce three times, in each instance affirming part of the determination. Final Order unanimously affirming the third Determination on Remand issued on December 27, 1992

USA-90-1904-02 Oil Country Tubular Goods from Canada

Commerce Final Determination Abolishment of End Use Certification Procedure

Appealed by: Canadian exporter
Outcome: Panel review terminated by joint consent of participants

USA-90-1904-03 Sheet Piling from Canada

Commerce Final Results of AD Duty and Cancellation of Suspension Agreement Administrative Review

Appealed by: Canadian producer
Outcome: Panel review terminated by joint consent of participants

USA-91-1904-01 Oil Country Tubular Goods from Canada

Commerce Final Determination - Scope Exclusion Request

Appealed by: Canadian producers
Outcome: Panel review terminated by joint consent of participants

USA-91-1904-02 Iron Construction Castings from Canada

Commerce Final Results of AD Duty Administrative Review for 1985-87

Appealed by: Canadian producer
Outcome: Panel review automatically terminated at request of complainant

USA-91-1904-03 Live Swine from Canada

Commerce Final Results of CVD Administrative Review for 1988-89

Appealed by: Canadian and provincial governments and Canadian producers
Outcome: In two decisions, Panel affirmed in part and remanded in part, with one partial dissent in both decisions, the agency's determinations. A request for Extraordinary Challenge Committee was filed (ECC-93-1904-01 USA) - see completed ECC Proceedings

USA-91-1904-04 Live Swine from Canada

Commerce Final Results of CVD Administrative Review for 1989-90

Appealed by: Canadian and provincial governments and Canadian producers
Outcome: In two unanimous decisions, Panel affirmed in part and remanded in part the agency's determinations. Final Order affirming second Determination on Remand issued on July 16, 1993

USA-91-1904-05 Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada

Commerce Final Results of AD Duty Administrative Review Jan. 89 - Aug. 89

Appealed by: Canadian producer
Outcome: Panel review automatically terminated at request of complainant

USA-92-1904-01 Certain Softwood Lumber Products from Canada

Commerce Final Affirmative CVD Determination

Appealed by: Canadian and provincial governments, Canadian producers and U.S. Industry
Outcome: A request for Extraordinary Challenge Committee was filed - see completed ECC Proceedings (ECC-94-1904-01 USA)

USA-92-1904-02 Certain Softwood Lumber Products from Canada

USITC Final Injury Determination

Appealed by: Canadian and provincial governments and Canadian producers
Outcome: Panel unanimously remanded the agency's determination three times, in the third instance affirming part of the determination. On January 27, 1995, Panel dismissed the panel review

USA-92-1904-03 Pure and Alloy Magnesium from Canada

Commerce Final Affirmative CVD Determination

Appealed by: Gouvernement du Quebec and Canadian producer
Outcome: Panel unanimously affirmed in part and remanded in part the agency's determination. Panel unanimously affirmed the Determination on Remand

USA-92-1904-04 Pure and Alloy Magnesium from Canada

Commerce Final Affirmative AD Duty Determination

Appealed by: Canadian producer
Outcome: Panel unanimously affirmed the agency's Determination on Remand

USA-92-1904-05/06 Magnesium from Canada

USITC Final Injury Determinations - (CVD & AD)

Appealed by: Canadian producer and the Gouvernement du Québec
Outcome: Panel unanimously affirmed in part and remanded in part the agency's determination. Panel unanimously affirmed the Determination on Remand.

USA-93-1904-03 Certain Corrosion-Resistant Carbon Steel Flat Products From Canada

Commerce Final Antidumping Determination

Appealed by: Canadian producers
Outcome: Panel, with two dissenting opinions, affirmed in part and remanded in part, the agency's determination. Panel unanimously affirmed in part and remand in part the agency's Determination on Remand. Final Order affirming the Determination on Remand issued on July 11, 1995

USA-93-1904-04 Certain Cut-To-Length Carbon Steel Plate From Canada

Commerce Final Antidumping Determination

Appealed by: Canadian producers
Outcome: Panel unanimously affirmed in part and remanded in part the agency's determination. Panel unanimously affirmed in part and remand in part the agency's Determination on Remand. Final order affirming the Determination on Remand issued on July 11, 1995

USA-93-1904-05 Certain Corrosion-Resistant Carbon Steel Flat Products from Canada

USITC Final Injury Determination

Appealed by: Canadian producers
Outcome: Panel unanimously affirmed the agency's determination

COMPLETED EXTRAORDINARY CHALLENGE COMMITTEE PROCEEDINGS

ECC-91-1904-01USA Fresh, Chilled and Frozen Pork from Canada

Extraordinary Challenge Committee (ECC) Proceeding

Requested by: U.S. Government
Outcome: Unanimously dismissed the request for failure to meet the standards for an extraordinary challenge set out in FTA Article 1904.13 and affirmed Panel decision and order

ECC-93-1904-01USA Live Swine from Canada

Extraordinary Challenge Committee (ECC) Proceeding

Requested by: U.S. Government
Outcome: ECC unanimously dismissed the request for failure to meet the standards of an extraordinary challenge out in FTA Article 1904.13 and affirmed Panel decision and order

ECC-94-1904-01USA Certain Softwood Lumber Products from Canada

Extraordinary Challenge Committee (ECC) Proceeding

Requested by: U.S. Government
Outcome: ECC, with one dissenting opinion, dismissed the request for failure to meet the standards of an extraordinary challenge set forth under FTA Article 1904.13 and affirmed the panel's decisions and Order.

COMPLETED CHAPTER 18 CASES

CDA-89-1807-01 West Coast Salmon and Herring from Canada

Appealed by: U.S. Government
Outcome: Unanimous Panel issued decision on October 16, 1989

USA-89-1807-01 United States Regulations on Lobster

Appealed by: Canadian Government
Outcome: Three member majority with two member dissent issued decision on May 25, 1990

USA-92-1807-01 Treatment of Non-Mortgage Interest Under Article 304

Appealed by: Canadian Government
Outcome: Unanimous Panel issued decision on June 8, 1992

CDA-92-1807-01 The Interpretation of and Canada's Compliance with Article 701.3 with Respect to Durum Wheat Sales

Appealed by: U.S. Government
Outcome: Unanimous Panel issued decision on February 8, 1993

USA-93-1807-01 Puerto Rico Regulations on the Import, Distribution and Sale of UHT Milk from Quebec

Appealed by: Canadian Government
Outcome: Unanimous Panel issued decision on June 3, 1993

Status Report revised September 11, 1995
NOTE: This report is provided for general information only. The full texts of all decisions may be obtained from:

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